

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANDREA MARIE WIKE,

Plaintiff,

vs.

DOUGLAS COUNTY, DIANE BATTIATO,
LILIANA E. SHANNON, THOMAS
WHEELER, MARY ANN BORGESON,
DONALD KLEINE, ALAN E. SOUTH, and
RON MURTAUGH,

Defendants.

8:22CV297

MEMORANDUM AND ORDER

On August 17, 2022, Plaintiff Andrea Marie Wike filed a motion to proceed in forma pauperis. [Filing No. 2](#). On August 23, 2022, the Court denied Wike's motion to proceed in forma pauperis for failure to comply with [28 U.S.C. § 1915](#), ordering Wike to pay the \$402.00 filing and administrative fees or file a new request for leave to proceed in forma pauperis in compliance with [28 U.S.C. § 1915](#) within 30 days or face dismissal of this action. [Filing No. 5](#). In response, on September 15, 2022, Wike filed a document captioned "Notice: Courts Shall Be Open, Justice Not for Sale, Delay nor Denial" (hereinafter "Notice") indicating she did not seek "to proceed 'in forma pauperis'" but rather filed the Notice (and her previous notice) "in lieu of Form AO 240." [Filing No. 6](#). The Court addressed the Notice in an Order dated September 16, 2022, finding "[Wike's] arguments that she should be exempt from paying the Court's filing and administrative

fees or from complying with the statutory requirements to proceed IFP [were] meritless,” ordering her to “either submit the \$402.00 filing and administrative fees to the Clerk’s Office or submit a proper request to proceed in forma pauperis that complies with [28 U.S.C. § 1915](#),” and giving her until September 30, 2022, in which to do so. [Filing No. 7 at 2–4](#).

Wike appealed this Court’s September 16, 2022 Memorandum and Order to the United States Court of Appeals for the Eighth Circuit, Case No. 22-3303 (the “Appeal”), seeking to proceed in this matter without payment. [Filing No. 8](#). Wike did not pay the \$505.00 appellate filing and docket fees nor did she submit a request to proceed in forma pauperis on appeal, and the Court denied Wike leave to proceed in forma pauperis on appeal. [Filing No. 13](#). The Eighth Circuit Court then issued several orders, the first on November 3, 2022, directing Wike to either pay the appellate filing fee to this Court or file a motion for leave to proceed in forma pauperis in the Eighth Circuit Court of Appeals within 28 days, or her Appeal would be subject to dismissal for failure to prosecute. [Filing No. 16](#). On December 8, 2022, the Eighth Circuit Court of Appeals issued an order indicating Wike had filed a request to proceed in forma pauperis on appeal but that it was incomplete, instructing her to complete a “copy of the attached ‘Application to Proceed Without Prepaying Fees or Costs’ or an affidavit that shows in the same detail the Appellant’s inability to pay or to give security for fees and costs,” and to return it to the Eighth Circuit Court of Appeals no later than December 22, 2022. [Filing No. 18](#). On January 20, 2023, the Eighth Circuit Court of Appeals having reviewed the file in this case, issued a judgment of dismissal, dismissing the Appeal for lack of jurisdiction as

premature, and denying the motions to proceed in forma pauperis on appeal as moot.

[Filing No. 19](#). The Appeal was mandated February 17, 2023. [Filing No. 20](#).

To date, Wike has not paid the fees in this Court, submitted a request for leave to proceed in forma pauperis, or taken any other action in this matter.

IT IS THEREFORE ORDERED that: This matter is dismissed without prejudice because Wike failed to prosecute it diligently and failed to comply with this Court's orders. The Court will enter judgment by a separate document.

Dated this 13th day of March, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge